

Union Calendar No. 25

104TH CONGRESS
1ST SESSION

H. R. 926

[Report No. 104-48]

A BILL

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes.

FEBRUARY 23, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1995

Mr. GEKAS (for himself and Mr. HYDE) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 23, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 14, 1995]

A BILL

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Regulatory Reform and*
3 *Relief Act”.*

4 **TITLE I—STRENGTHENING**
5 **REGULATORY FLEXIBILITY**

6 **SEC. 101. JUDICIAL REVIEW.**

7 (a) *AMENDMENT.*—Section 611 of title 5, United
8 *States Code, is amended to read as follows:*

9 **“§611. Judicial review**

10 “(a)(1) *Except as provided in paragraph (2), not later*
11 *than 180 days after the effective date of a final rule with*
12 *respect to which an agency—*

13 “(A) *certified, pursuant to section 605(b), that*
14 *such rule would not have a significant economic im-*
15 *pact on a substantial number of small entities; or*

16 “(B) *prepared a final regulatory flexibility anal-*
17 *ysis pursuant to section 604,*

18 *an affected small entity may petition for the judicial review*
19 *of such certification or analysis in accordance with the*
20 *terms of this subsection. A court having jurisdiction to re-*
21 *view such rule for compliance with the provisions of section*
22 *553 or under any other provision of law shall have jurisdic-*
23 *tion to review such certification or analysis.*

24 “(2)(A) *Except as provided in subparagraph (B), in*
25 *the case where a provision of law requires that an action*
26 *challenging a final agency regulation be commenced before*

1 *the expiration of the 180 day period provided in paragraph*
2 *(1), such lesser period shall apply to a petition for the judi-*
3 *cial review under this subsection.*

4 *“(B) In the case where an agency delays the issuance*
5 *of a final regulatory flexibility analysis pursuant to section*
6 *608(b), a petition for judicial review under this subsection*
7 *shall be filed not later than—*

8 *“(i) 180 days; or*

9 *“(ii) in the case where a provision of law re-*
10 *quires that an action challenging a final agency regu-*
11 *lation be commenced before the expiration of the 180-*
12 *day period provided in paragraph (1), the number of*
13 *days specified in such provision of law,*
14 *after the date the analysis is made available to the public.*

15 *“(3) For purposes of this subsection, the term ‘affected*
16 *small entity’ means a small entity that is or will be ad-*
17 *versely affected by the final rule.*

18 *“(4) Nothing in this subsection shall be construed to*
19 *affect the authority of any court to stay the effective date*
20 *of any rule or provision thereof under any other provision*
21 *of law.*

22 *“(5)(A) In the case where the agency certified that such*
23 *rule would not have a significant economic impact on a*
24 *substantial number of small entities, the court may order*
25 *the agency to prepare a final regulatory flexibility analysis*

1 *pursuant to section 604 if the court determines, on the basis*
2 *of the rulemaking record, that the certification was arbi-*
3 *trary, capricious, an abuse of discretion, or otherwise not*
4 *in accordance with law.*

5 “(B) *In the case where the agency prepared a final*
6 *regulatory flexibility analysis, the court may order the*
7 *agency to take corrective action consistent with the require-*
8 *ments of section 604 if the court determines, on the basis*
9 *of the rulemaking record, that the final regulatory flexibil-*
10 *ity analysis was prepared by the agency without observance*
11 *of procedure required by section 604.*

12 “(6) *If, by the end of the 90-day period beginning on*
13 *the date of the order of the court pursuant to paragraph*
14 *(5) (or such longer period as the court may provide), the*
15 *agency fails, as appropriate—*

16 “(A) *to prepare the analysis required by section*
17 *604; or*

18 “(B) *to take corrective action consistent with the*
19 *requirements of section 604,*
20 *the court may stay the rule or grant such other relief as*
21 *it deems appropriate.*

22 “(7) *In making any determination or granting any*
23 *relief authorized by this subsection, the court shall take due*
24 *account of the rule of prejudicial error.*

1 “(b) In an action for the judicial review of a rule, any
 2 regulatory flexibility analysis for such rule (including an
 3 analysis prepared or corrected pursuant to subsection
 4 (a)(5)) shall constitute part of the whole record of agency
 5 action in connection with such review.

6 “(c) Nothing in this section bars judicial review of any
 7 other impact statement or similar analysis required by any
 8 other law if judicial review of such statement or analysis
 9 is otherwise provided by law.”.

10 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 11 section (a) shall apply only to final agency rules issued
 12 after the date of enactment of this Act.

13 **SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL**
 14 **FOR ADVOCACY.**

15 (a) *IN GENERAL.*—Section 612 of title 5, United
 16 States Code, is amended by adding at the end the following
 17 new subsection:

18 “(d) *ACTION BY THE SBA CHIEF COUNSEL FOR ADVO-*
 19 *CACY.*—

20 “(1) *TRANSMITTAL OF PROPOSED RULES AND*
 21 *INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA*
 22 *CHIEF COUNSEL FOR ADVOCACY.*—On or before the
 23 30th day preceding the date of publication by an
 24 agency of general notice of proposed rulemaking for a

1 *rule, the agency shall transmit to the Chief Counsel*
2 *for Advocacy of the Small Business Administration—*

3 *“(A) a copy of the proposed rule; and*

4 *“(B)(i) a copy of the initial regulatory*
5 *flexibility analysis for the rule if required under*
6 *section 603; or*

7 *“(ii) a determination by the agency that an*
8 *initial regulatory flexibility analysis is not re-*
9 *quired for the proposed rule under section 603*
10 *and an explanation for the determination.*

11 *“(2) STATEMENT OF EFFECT.—On or before the*
12 *15th day following receipt of a proposed rule and ini-*
13 *tial regulatory flexibility analysis from an agency*
14 *under paragraph (1), the Chief Counsel for Advocacy*
15 *may transmit to the agency a written statement of*
16 *the effect of the proposed rule on small entities.*

17 *“(3) RESPONSE.—If the Chief Counsel for Advo-*
18 *cacy transmits to an agency a statement of effect on*
19 *a proposed rule in accordance with paragraph (2),*
20 *the agency shall publish the statement, together with*
21 *the response of the agency to the statement, in the*
22 *Federal Register at the time of publication of general*
23 *notice of proposed rulemaking for the rule.*

24 *“(4) SPECIAL RULE.—Any proposed rules issued*
25 *by an appropriate Federal banking agency (as that*

1 *term is defined in section 3(q) of the Federal Deposit*
2 *Insurance Act (12 U.S.C. 1813(q)), the National*
3 *Credit Union Administration, or the Office of Federal*
4 *Housing Enterprise Oversight, in connection with the*
5 *implementation of monetary policy or to ensure the*
6 *safety and soundness of federally insured depository*
7 *institutions, any affiliate of such an institution, cred-*
8 *it unions, or government sponsored housing enter-*
9 *prises or to protect the Federal deposit insurance*
10 *funds shall not be subject to the requirements of this*
11 *subsection.”.*

12 *(b) CONFORMING AMENDMENT.—Section 603(a) of*
13 *title 5, United States Code, is amended by inserting “in*
14 *accordance with section 612(d)” before the period at the end*
15 *of the last sentence.*

16 **SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF**
17 **COUNSEL FOR ADVOCACY.**

18 *It is the sense of Congress that the Chief Counsel for*
19 *Advocacy of the Small Business Administration should be*
20 *permitted to appear as amicus curiae in any action or case*
21 *brought in a court of the United States for the purpose of*
22 *reviewing a rule.*

1 **TITLE II—REGULATORY IMPACT**
2 **ANALYSES**

3 **SEC. 201. DEFINITIONS.**

4 *Section 551 of title 5, United States Code, is amended*
5 *by striking “and” at the end of paragraph (13), by striking*
6 *the period at the end of paragraph (14) and inserting a*
7 *semicolon, and by adding at the end the following:*

8 *“(15) ‘major rule’ means any rule subject to sec-*
9 *tion 553(c) that is likely to result in—*

10 *“(A) an annual effect on the economy of*
11 *\$50,000,000 or more;*

12 *“(B) a major increase in costs or prices for*
13 *consumers, individual industries, Federal, State,*
14 *or local government agencies, or geographic re-*
15 *gions, or*

16 *“(C) significant adverse effects on competi-*
17 *tion, employment, investment, productivity, in-*
18 *novation, or on the ability of United States-*
19 *based enterprises to compete with foreign-based*
20 *enterprises in domestic and export markets; and*

21 *“(16) ‘Director’ means the Director of the Office*
22 *of Management and Budget.”.*

23 **SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.**

24 *Section 553 of title 5, United States Code, is amended*
25 *by adding at the end the following:*

1 “(f)(1) Each agency shall for a proposed major rule
2 publish in the Federal Register, at least 90 days before the
3 date of publication of the general notice required under sub-
4 section (b), a notice of intent to engage in rulemaking.

5 “(2) A notice under paragraph (1) for a proposed
6 major rule shall include, to the extent possible, the informa-
7 tion required to be included in a regulatory impact analysis
8 for the rule under subsection (i)(4)(B) and (D).

9 “(3) For a major rule proposed by an agency, the head
10 of the agency shall include in a general notice under sub-
11 section (b), a preliminary regulatory impact analysis for
12 the rule prepared in accordance with subsection (i).

13 “(4) For a final major rule, the agency shall include
14 with the statement of basis and purpose—

15 “(A) a final regulatory impact analysis of the
16 rule in accordance with subsection (i); and

17 “(B) a clear delineation of all changes in the in-
18 formation included in the final regulatory impact
19 analysis under subsection (i) from any such informa-
20 tion that was included in the notice for the rule under
21 subsection (b).”.

1 **SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES;**
2 **AND EXTENSION OF COMMENT PERIOD.**

3 (a) *HEARING REQUIREMENT.*—Section 553 of title 5,
4 *United States Code*, as amended by section 202, is further
5 amended by adding after subsection (f) the following:

6 “(g) If more than 100 interested persons acting indi-
7 vidually submit requests for a hearing to an agency regard-
8 ing any rule proposed by the agency, the agency shall hold
9 such a hearing on the proposed rule.”.

10 (b) *EXTENSION OF COMMENT PERIOD.*—Section 553
11 of title 5, *United States Code*, as amended by subsection
12 (a), is further amended by adding after subsection (g) the
13 following:

14 “(h) If during the 90-day period beginning on the date
15 of publication of a notice under subsection (f) for a proposed
16 major rule, or if during the period beginning on the date
17 of publication or service of notice required by subsection
18 (b) for a proposed rule, more than 100 persons individually
19 contact the agency to request an extension of the period for
20 making submissions under subsection (c) pursuant to the
21 notice, the agency—

22 “(1) shall provide an additional 30-day period
23 for making those submissions; and

24 “(2) may not adopt the rule until after the addi-
25 tional period.”.

1 (c) *RESPONSE TO COMMENTS.*—Section 553(c) of title
2 5, United States Code, is amended—

3 (1) by inserting “(1)” after “(c)”; and

4 (2) by adding at the end the following:

5 “(2) Each agency shall publish in the Federal Register,
6 with each rule published under section 552(a)(1)(D), re-
7 sponds to the substance of the comments received by the
8 agency regarding the rule.”.

9 **SEC. 204. REGULATORY IMPACT ANALYSIS.**

10 Section 553 of title 5, United States Code, as amended
11 by section 203, is amended by adding after subsection (h)
12 the following:

13 “(i)(1) Each agency shall, in connection with every
14 major rule, prepare, and, to the extent permitted by law,
15 consider, a regulatory impact analysis. Such analysis may
16 be combined with any regulatory flexibility analysis per-
17 formed under sections 603 and 604.

18 “(2) Each agency shall initially determine whether a
19 rule it intends to propose or issue is a major rule. The Di-
20 rector shall have authority to order a rule to be treated as
21 a major rule and to require any set of related rules to be
22 considered together as a major rule.

23 “(3) Except as provided in subsection (j), agencies
24 shall prepare—

1 “(A) a preliminary regulatory impact analysis,
2 which shall be transmitted, along with a notice of
3 proposed rulemaking, to the Director at least 60 days
4 prior to the publication of notice of proposed rule-
5 making, and

6 “(B) a final regulatory impact analysis, which
7 shall be transmitted along with the final rule at least
8 30 days prior to the publication of a major rule.

9 “(4) Each preliminary and final regulatory impact
10 analysis shall contain the following information:

11 “(A) A description of the potential benefits of the
12 rule, including any beneficial effects that cannot be
13 quantified in monetary terms and the identification
14 of those likely to receive the benefits.

15 “(B) An explanation of the necessity, legal au-
16 thority, and reasonableness of the rule and a descrip-
17 tion of the condition that the rule is to address.

18 “(C) A description of the potential costs of the
19 rule, including any adverse effects that cannot be
20 quantified in monetary terms, and the identification
21 of those likely to bear the costs.

22 “(D) An analysis of alternative approaches, in-
23 cluding market based mechanisms, that could substan-
24 tially achieve the same regulatory goal at a lower cost
25 and an explanation of the reasons why such alter-

1 *native approaches were not adopted, together with a*
2 *demonstration that the rule provides for the least cost-*
3 *ly approach.*

4 “(E) *A statement that the rule does not conflict*
5 *with, or duplicate, any other rule or a statement of*
6 *the reasons why such a conflict or duplication exists.*

7 “(F) *A statement of whether the rule will require*
8 *on-site inspections or whether persons will be required*
9 *by the rule to maintain any records which will be*
10 *subject to inspection.*

11 “(G) *An estimate of the costs to the agency for*
12 *implementation and enforcement of the rule and of*
13 *whether the agency can be reasonably expected to im-*
14 *plement the rule with the current level of appropria-*
15 *tions.*

16 “(5)(A) *the Director is authorized to review and pre-*
17 *pare comments on any preliminary or final regulatory im-*
18 *pact analysis, notice of proposed rulemaking, or final rule*
19 *based on the requirements of this subsection.*

20 “(B) *Upon the request of the Director, an agency shall*
21 *consult with the Director concerning the review of a pre-*
22 *liminary impact analysis or notice of proposed rulemaking*
23 *and shall refrain from publishing its preliminary regu-*
24 *latory impact analysis or notice of proposed rulemaking*
25 *until such review is concluded. The Director’s review may*

1 *not take longer than 90 days after the date of the request*
2 *of the Director.*

3 “(6)(A) *An agency may not adopt a major rule unless*
4 *the final regulatory impact analysis for the rule is approved*
5 *or commented upon in writing by the Director or by an*
6 *individual designated by the Director for that purpose.*

7 “(B) *Upon receiving notice that the Director intends*
8 *to comment in writing with respect to any final regulatory*
9 *impact analysis or final rule, the agency shall refrain from*
10 *publishing its final regulatory impact analysis or final rule*
11 *until the agency has responded to the Director’s comments*
12 *and incorporated those comments in the agency’s response*
13 *in the rulemaking file. If the Director fails to make such*
14 *comments in writing with respect to any final regulatory*
15 *impact analysis or final rule within 90 days of the date*
16 *the Director gives such notice, the agency may publish such*
17 *final regulatory impact analysis or final rule.*

18 “(7) *Notwithstanding section 551(16), for purposes of*
19 *this subsection with regard to any rule proposed or issued*
20 *by an appropriate Federal banking agency (as that term*
21 *is defined in section 3(q) of the Federal Deposit Insurance*
22 *Act (12 U.S.C. 1813(q)), the National Credit Union Admin-*
23 *istration, or the Office of Federal Housing Enterprise Over-*
24 *sight, the term ‘Director’ means the head of such agency,*
25 *Administration, or Office.’.*

1 **SEC. 205. STANDARD OF CLARITY.**

2 *Section 553 of title 5, United States Code, as amended*
3 *in section 204, is amended by adding after subsection (i)*
4 *the following:*

5 *“(j) To the extent practicable, the head of an agency*
6 *shall seek to ensure that any proposed major rule or regu-*
7 *latory impact analysis of such a rule is written in a reason-*
8 *ably simple and understandable manner and provides ade-*
9 *quate notice of the content of the rule to affected persons.”.*

10 **SEC. 206. EXEMPTIONS.**

11 *Section 553 of title 5, United States Code, as amended*
12 *by section 205, is further amended by adding after sub-*
13 *section (j) the following:*

14 *“(k)(1) The provisions of this section regarding major*
15 *rules shall not apply to—*

16 *“(A) any regulation that responds to an emer-*
17 *gency situation if such regulation is reported to the*
18 *Director as soon as is practicable;*

19 *“(B) any regulation for which consideration*
20 *under the procedures of this section would conflict*
21 *with deadlines imposed by statute or by judicial*
22 *order; and*

23 *“(C) any regulation proposed or issued in con-*
24 *nection with the implementation of monetary policy*
25 *or to ensure the safety and soundness of federally in-*
26 *sured depository institutions, any affiliate of such in-*

1 stitution, credit unions, or government sponsored
 2 housing enterprises regulated by the Office of Federal
 3 Housing Enterprise Oversight.

4 A regulation described in subparagraph (B) shall be re-
 5 ported to the Director with a brief explanation of the con-
 6 flict and the agency, in consultation with the Director,
 7 shall, to the extent permitted by statutory or judicial dead-
 8 lines, adhere to the process of this section.

9 “(2) The Director may in accordance with the pur-
 10 poses of this section exempt any class or category of regula-
 11 tions from any or all requirements of this section.”.

12 **SEC. 207. REPORT.**

13 The Director of the Office of Management and Budget
 14 shall submit a report to the Congress no later than 24
 15 months after the date of the enactment of this Act contain-
 16 ing an analysis of rulemaking procedures of Federal agen-
 17 cies and an analysis of the impact of those rulemaking pro-
 18 cedures on the regulated public and regulatory process.

19 **TITLE III—PROTECTIONS**

20 **SEC. 301. PRESIDENTIAL ACTION.**

21 Pursuant to the authority of section 7301 of title 5,
 22 United States Code, the President shall, within 180 days
 23 of the date of the enactment of this title, prescribe regula-
 24 tions for employees of the executive branch to ensure that
 25 Federal laws and regulations shall be administered consist-

1 *ent with the principle that any person shall, in connection*
2 *with the enforcement of such laws and regulations—*

3 *(1) be protected from abuse, reprisal, or retaliation,*
4 *and*

5 *(2) be treated fairly, equitably, and with due re-*
6 *gard for such person's rights under the Constitution.*

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